

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.12.2009

CORAM

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN
AND
THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

TAX CASE (APPEAL) NO.460 OF 2004

M/s.Southern Foundation P.Ltd.,
No.51, Bheemasena Gardens,
Mylapore, Chennai-4.

..Appellant

Vs

The Assistant Commissioner of Income Tax
Company Circle - IV(6),
Chennai-34.

..Respondent

Appeal against the order of the Income Tax Appellate Tribunal dated 03.01.2003 and made in ITA.No.680(Mds)2001 for the Assessment Year 1997-98. Appeal against order of the Commissioner of Income Tax (Appeals)IV, Chennai-600 034 made in I.T.Appeal No.97/2000-01 dated 23.02.2001 and against the order of Deputy Commissioner of Income Tax Company Circle IV(6) Chennai, made in G.I.No./P.A.No.1704S and years of the Assessment 1997-98 dated 21.03.2000.

For Appellant : Mr.R.Venkatanarayanan for
Mr.Subburaya Aiyar Padmanabhan
For Respondent: Mr.J.Narayanaswamy

JUDGMENT

(JUDGMENT WAS DELIVERED BY K.RAVIRAJA PANDIAN,J)

Not satisfied with the order of the Tribunal dated 3.1.2003 in ITA No.680/Mds/2001 relating to the assessment year 1997-98, the assessee has filed this appeal.

2. The appeal has been admitted on the following substantial question of law:

"Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right

in disallowing the direct expenditure incurred towards various projects as claimed by the appellant?"

3. The facts culled out from the statement of facts contained in the memorandum of grounds are as follows:

The assessee is engaged in the business of promotion of real estate and construction. For the assessment year 1997-98, the assessee filed return of income on 28.11.1997 admitting the total income of Rs.1,08,720/-. While completing the assessment, among other disallowances, the Assessing Officer disallowed a sum of Rs.12,29,025/- towards direct expenses, namely, site electricity, site expenses, commission, rent etc. The Assessing Officer chose to disallow the direct expenditure in respect of four projects namely Yesodha, Blossom, Gayathri and Krishna arcade. On appeal, the Commissioner confirmed the disallowances on the ground that the assessee was following the project completion method and the appellant did not offer any income from those projects.

4. Aggrieved against the order of the Commissioner, the assessee preferred an appeal to the Tribunal on the premise that the direct expenditure claimed by the assessee by way of site electricity, site expenses, commission, rent etc. are direct expenses, which are incurred by the appellant on day to day basis. Those expenses are in the nature of period cost allowable in the year in which the expenditure was incurred. However, the Tribunal, without considering those facts, disallowed the claim of the appellant on the ground that the appellant, having followed the project completion method, ought to have realised some income in order to claim expenditure.

5. Before us, it is contended by the learned counsel for the assessee that though the assessee is fair enough to accept that certain excess amount need not be allowed, the authorities under the Act ought to have allowed the expenses towards brokerage and commission pertaining to those projects. On the other hand, learned counsel for the Revenue submitted that the disallowance, which is put in issue before the Appellate Authority is the very same amount, for which, the assessee admitted for disallowance before the Assessing Officer and that the claim of expenses need not be considered even before this court. They have taken alternate plea that this amount can be considered in respect of future assessment year where the project earn income, which clearly shows that they are not specific about the expenditure for which they are seeking deduction.

6. We have heard the learned counsel on either side and perused the material on record. We are unable to appreciate the way in which the assessee filed the appeal. It is clear from the assessment order where the amount of Rs.12,29,025/- claimed as expenses has been accepted by the assessee itself that the claim

should be disallowed. For the sake of clarity, we reproduce the observation available in the assessment order, which is as follows:

"The assessee's AR was asked to explain that why the assessee company has not offered any income from the above said four projects and why construction cost was claimed against those projects. In response to same, the assessee's AR explained that the assessee company has not offered any income from the said four projects because these projects are not yet started. The assessee's AR also explained that those projects are not yet started is evident from the facts that the assessee company has not claimed any land cost against those projects. Since the said four projects were not started by 31.3.97 and no income was offered against those projects, so the assessee's AR was asked to explain that why construction cost claimed against these projects should not be disallowed following the percentage completion method. In response to same, the assessee's AR explained that they don't have any objection in disallowance of direct expenses related to these four projects. Entire cost of construction is direct expenses only and hence the cost of construction claimed against following projects are disallowed and added back to total income:-

1) Yashoda	:	Rs. 2,04,925/-
2) Blossom	:	Rs. 3,29,112/-
3) Gayathri	:	Rs. 35,000/-
4) K. Arcade	:	Rs. 6,59,988/-

TOTAL	:	Rs.12,29,025/-
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However, the assessee filed an appeal by stating that the commission and brokerage in respect of procurement of land have not been granted as expenses incurred by the assessee. Both before the First Appellate Authority and the Tribunal, this stand has been taken by the assessee. We are unable to appreciate the arguments of the learned counsel for the assessee, as what was disallowed by the Assessing Officer was on the consent given by the assessee regarding expenses as direct expenditure on the projects in a sum of Rs.12,29,025/-. Apart from that, the amount of brokerage or commission has never been considered in the assessment order. An issue which is not available in the assessment order has been taken on appeal before the two Authorities below and ultimately before us also. We do not find any merit in this appeal to consider the issue, which has never been considered before any of the Authorities below.

7. In the above stated facts and circumstances of the case, the appeal is dismissed as the question of law raised does not arise from the orders of the Tribunal.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

RS

To

1. The Assistant Registrar,
Appellate Tribunal,
Rajaji Bhavan,
Besant Nagar,
Chennai-90.
2. The Commissioner of Income Tax (Appeals) IV,
Chennai-600 034.
3. The Deputy Commissioner of Income Tax,
Company Circle - IV (6),
Chennai-34.
4. The Assistant Commissioner of Income Tax,
Company Circle IV(6),
Chennai-600 034.

AKR (CO)
GSK 17.12.2009.

T.C.(A) NO.460 OF 2004

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